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Before the  
Federal Communications Commission  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Interconnection and Resale Obligations	)	CC Dkt. No. 94-54
Pertaining to Commercial Mobile	)	
Radio Services	)	DA No. 97-2558
	)	

**REPLY COMMENTS OF OMNIPPOINT COMMUNICATIONS, INC.**

**Introduction and Summary**

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys, submits these reply comments in response to the issues raised in the Public Notice.<sup>1</sup> Omnipoint filed comments on January 5, 1998 to provide the Commission with additional input on automatic roaming. Omnipoint supports a Commission mandate for automatic roaming between technically compatible CMRS networks that deploy technically compatible handsets. Omnipoint believes that any such mandate for automatic roaming should provide for equal and non-discriminatory prices, terms and conditions, and further believes that any mandate should sunset after a period of five years. Many interested parties have filed comments in these proceedings and Omnipoint would like to specifically address some issues raised by the parties.

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<sup>1</sup> Public Notice, DA 97-2558 (rel. Dec. 5, 1997) (the "Public Notice").

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## **Discussion**

### **I. Non-Discriminatory In-Market Roaming is Essential to a Commission Mandate Providing for Automatic Roaming.**

Omnipoint supports the position of AT&T Wireless, Cincinnati Bell and Meretel that any Commission action mandating automatic roaming must include an in-market roaming rule.<sup>2</sup> In-market roaming is essential to the ability of new entrant CMRS providers to compete effectively while building out their networks. Absent a mandate by the Commission requiring in-market roaming, new entrants will face insurmountable barriers to entry in those markets where incumbent carriers refuse to negotiate for reasonable, non-discriminatory rates, terms and conditions of roaming. If incumbent carriers effectively prevent roaming within a market, or allow roaming only at highly exorbitant rates, new entrants will encounter great difficulties in providing a satisfactory minimum level of coverage for customers. Thus, those customers will be deprived of the benefits of greater competition, including lower prices and enhanced services.

Airtouch claims that if in-market roaming is required, new entrants will rely on roaming instead of proceeding with network build-out.<sup>3</sup> This simply is not the case. New entrants must meet the Commission's build out requirements<sup>4</sup> and, therefore, have every incentive to complete their network build out. Furthermore, rapid completion of their network will allow the CMRS provider to ensure high quality service and lower

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<sup>2</sup> AT&T Wireless Comments at 6-9; Cincinnati Bell Comments at 3, 4; Meretel Comments at 3.

<sup>3</sup> Airtouch Comments at 3.

<sup>4</sup> See, e.g., 47 C.F.R. § 24.203(a)&(b) (all broadband PCS operators have build out obligations).

costs. Although useful as a temporary stopgap measure to fill coverage lapses or extend coverage area, a wireless service built substantially on roaming cannot be a cost effective solution to new entrants. To the extent these providers rely on in-market roaming to supplement their network coverage, they are foregoing a fundamental revenue stream, thus having incentive to quickly convert roaming service areas into their own networks. Contrary to what some carriers are claiming, incumbent providers are not harmed by an automatic roaming mandate. In return for allowing roaming on its network, an incumbent provider gains a substantial income stream. This income is more than sufficient to offset any costs incurred by allowing roaming on the network.

Airtouch suggests that new entrant CMRS providers should be left to fill in any holes in coverage area through either manual roaming or resale.<sup>5</sup> Manual roaming, however, is not a viable option for carriers seeking to provide their customers ease of service and seamless communications. Manual roaming requires the customer to initiate a communication with the host carrier whereby the host network obtains billing and collection information from the customer, usually in the form of a credit card number, prior to any use by the customer of the host provider's network.<sup>6</sup> Obviously, this is not uninterrupted service, which is the central benefit a customer receives with automatic roaming. To require a CMRS provider to resort to manual roaming while completing network build-out is not an acceptable solution. In-market resale is not an acceptable solution either. As AT&T Wireless has noted, resale requires customers to manually reprogram their handset every time they move from the provider's coverage area to the

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<sup>5</sup> Airtouch Comments at 13.

<sup>6</sup> Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd. 9462, 9465 (1996) [hereinafter the "Second R&O"].

provider's resale area.<sup>7</sup> For a customer seeking convenience in a wireless service provider, manual roaming and resale cannot substitute for in-market automatic roaming.

**II. An Automatic Roaming Mandate with a Five Year Sunset Allows Sufficient Time for a New Entrant to Complete Start-Up of Its Network Without Being Denied the Opportunity to Become a Viable Market Competitor.**

A five year sunset to any automatic roaming requirement allows sufficient time for new entrants to complete their network build-out without being subject to the possible discriminatory practices of incumbent providers. These discriminatory practices include charging exorbitant roaming rates, and sometimes refusing to allow roaming at all.<sup>8</sup> Many commenters in this proceeding expressed concern that automatic roaming will act to discourage new entrants from ever building out their systems, instead relying indefinitely on roaming.<sup>9</sup> A five year sunset assuages this concern, and is consistent with the Commission's resale obligations.

**III. Omnipoint Only Supports Automatic Roaming On Both Technically Compatible Networks and Handsets.**

Both 360° Communications and Centennial Cellular expressed concern that any automatic roaming mandate would come at a significant cost to the host network.<sup>10</sup> Omnipoint does not support an automatic roaming mandate that would require CMRS

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<sup>7</sup> AT&T Wireless Comments at 6-7.

<sup>8</sup> Omnipoint Comments at 2, 6; AT&T Wireless Comments at 1, 8, 10.

<sup>9</sup> See Airtouch Comments at 3; Centennial Cellular Comments at 2-3.

<sup>10</sup> 360° Communications Comments at 4; Centennial Cellular Comments at 1; see CTIA Comments at 8-11 (stating that while technological advancements are being made to accommodate automatic roaming on technically different networks, the process is prohibitively costly to many CMRS providers).

providers to invest in expensive technological advancements to their present systems to accommodate roaming.<sup>11</sup> Rather, any automatic roaming mandate should be limited to situations where CMRS providers utilize compatible technologies and/or technically compatible handsets, so that costs are not prohibitive to any carrier. Each CMRS provider has made its choice of technology and now must live with the consequences of its decision; no CMRS provider should be penalized by the technology choices of others. Any requirement mandating automatic roaming on currently incompatible networks would work to the disadvantage of consumers because providers would pass along to the consumer their additional costs, effectively raising rates.

**IV. Any Automatic Roaming Mandate Must Provide For Non-Discriminatory Rates to All CMRS Providers.**

A Commission mandate for automatic roaming without a corresponding requirement of non-discriminatory rates would effectively provide no benefit to CMRS providers. Incumbent providers, if left to market forces, will have every incentive to discriminate against new entrants seeking to build out their networks. If the new entrant cannot afford to pay costly roaming rates, in many cases it will not be able to provide a satisfactory minimum level of coverage to begin providing service to the public. Incumbents carriers leave new entrants with no viable option but to pay the rates. AT&T Wireless and Sprint Spectrum both state that they have encountered difficult negotiations, and have even been denied access to roaming in some cases.<sup>12</sup> Some small carriers, in fact, have built lucrative businesses based almost exclusively on allowing roaming on their networks, often at exorbitant rates. This type of practice does not in any

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<sup>11</sup> Omnipoint Comments at 3-5.

<sup>12</sup> AT&T Wireless Comments at 3-4; Sprint Spectrum Comments at 3; see GTE Service Corporation Comments at 3.

way help consumers, whose rates inevitably rise due to the extremely high roaming rates charged by the host carrier. A requirement of non-discriminatory rates will reduce the incidence of this practice, which undoubtedly helps consumers in the long run.

**V. Automatic Roaming is Subject to the Commission's Common Carrier Jurisdiction.**

Airtouch argues that automatic roaming is a billing contract, and not a communications service subject to the Commission's Title II authority under the Communications Act.<sup>13</sup> The Commission has already decided this issue in its Second R&O, finding that sections 201(b) and 202(a) of the Act apply to CMRS providers, and that roaming is a common carrier service subject to the Commission's jurisdiction.<sup>14</sup> Therefore, the Commission does have the authority to promulgate regulations relating to roaming, including mandating automatic roaming.

**Conclusion**

The Commission should mandate automatic roaming between technically compatible networks on technically compatible handsets. Such a mandate should provide for non-discriminatory rates for both in-market and out-of market roaming and should sunset after a period of five years, allowing sufficient time for new entrants to complete

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<sup>13</sup> Airtouch Comments at 8-10.

<sup>14</sup> Second R&O, 11 FCC Rcd. at 9468-69.

their networks without suffering undue discrimination at the hands of incumbent providers, which ultimately works to the disadvantage of customers.

Respectfully submitted,

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